

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JANICE LAFOND,)	
)	DOCKET NO: PT-1996-15
Appellant,)	
)	
-vs-)	<u>OPINION and ORDER</u>
)	
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

The State Tax Appeal Board elected to hear the above entitled appeal on the record, pursuant to Section 15-2-301(2), MCA. Both parties were provided copies of the transcript of the Phillips County Tax Appeal Board hearing and were given thirty (30) days to submit additional statements if they wished to do so. The Department of Revenue (hereinafter DOR), represented by Ross Halvorson, commercial appraiser and the taxpayer, represented by Craig LaFond, responded with additional statements which are made part of the record. Neither party notified this Board that statements had not been received from the opposing party.

FINDINGS OF FACT

1. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Lots 9 & 10, Taftons 3rd Addition, City of Malta, Phillips County, State of Montana.

2. For the 1996 tax year, the DOR appraised the subject land at a value of \$7,800.

3. The taxpayers appealed to the Phillips County Tax Appeal Board on May 6, 1996, requesting a value of \$2,888, stating:

Actual property value should be basis for taxes my example is the city has taken back numerous lots because of taxes. The sale price of the majority of those lots is approx (sic) \$3,000.00. I paid \$2,888.00 for the above property & I believe the price a person pays for property should be basis for valuation.

4. The county board, in its decision, adjusted the value, stating:

Considering the purchase price of lot was \$3,000 and appraisers value was 7,800 (sic), we feel there were not enough sales of comparable lots to justify the appraiser's value. A value of 6,300 (sic) seems reasonable.

5. On October 9, 1996, the taxpayer appealed that decision to this Board stating:

The value of lots in Malta have been dropping for the last 10 years. 10 years ago these lots were worth & could have been sold for \$7,800. These lots have been for sale for two years & could be no where near their assessed value. I paid \$2,888.00 for this property & would suggest an assessed value of the same amount. The city of Malta took back many lots because of taxes. They are trying to sell them for \$2500 & have had a very hard time selling any!!

TAXPAYER'S CONTENTIONS

The subject property was listed for sale at \$10,000 for approximately two years. The taxpayer purchased the property for \$2,888 in August of 1995.

The subject property only having 60 feet of frontage makes the property undesirable as a building site. The subject property is being used for onsite parking in conjunction with an adjacent property.

There have been numerous city lots taken back for delinquent taxes which are currently being offered for sale at below market values. These available lots are impacting the values of other vacant lots.

DEPARTMENT OF REVENUE'S CONTENTIONS

Mr. Halvorson provided exhibits with accompanying comments:

- Exhibit #1 (document 1) - CALP (COMPUTER ASSISTED LAND PRICING) tables - The CALP (Computer Assisted Land Pricing) tables for Phillips county were established using values from the previous cycle. There were insufficient sales to run regression analysis. House Bill 436 adjusted lot values down 14% for the 1982 appraisal cycle. The values used starting in tax year 1993 reflected this adjustment.

The Subject property's value has been determined by a front foot figure of \$130.

- Exhibits 2 & 3 (documents 2 & 3) - Property Record Cards & Realty Transfer Certificates for the subject property and three comparable sales.
- Exhibit #4 (document 4) - Map illustrating the location of the subject property along with the three comparable sales.
- Exhibit #6 (document 6) - A letter from the Mayor of Malta, dated March 30, 1993, stating:

We, the Mayor and City council accepted 32 lots in the Riverview Addition, Phase I, and 41 lots in Legg Addition by negotiating with the owners. The reason the lots were accepted was due to the delinquent taxes against the properties. The City plans to sell these lots in order to get them on the tax roll again. The City has elected to sell these lots for less than what would be construed as fair market value in order to sell the lots as quickly as possible.

- The subject lot is in an older established section of Malta. This lot has paved street, sidewalk, and curbing, lighting and all utilities.

The sales used as comparable are all in newer subdivision. Sales number 1 and 3 do not have paved streets, sidewalks or lighting districts. Sale number 2 does not have sidewalks or a lighting district.

All of the lots including the subject are large enough to

build on and are approved for residential development.

The subject lot is valued consistently with other lots with the same attributes.

DISCUSSION

The DOR established a front foot value of \$130 for the subject property based on the prior appraisal cycle in conjunction with House Bill 436 from the 1987 legislative session.

House Bill 436 - An act requiring the Department of Revenue to conduct a sales assessment ratio study for the purpose of annually determining the correct assessment level for similar property located in specific areas of the State of Montana.

The courts said the DOR's application of a "stratified sales assessment ratio study" violates equal protection by causing disparity of treatment of taxpayers. *Montana Department of Revenue v. Barron* (1990), 245 Mont. 100, 799 P2d 533 and *Montana Department of Revenue v. Sheehy*, (1993), 262 Mont. 104, 862 P2d 1181, It's unknown to this Board how the effect of the stratified sales assessment ratio studies has impacted the market value of the subject property since no sales information from the 1986 appraisal cycle was made part of the record.

To assist the Board in a market value determination for the subject property, the following table has been created from the DOR and taxpayer exhibits:

SUMMARY COMPARISON - DOR MARKET VALUE DATA				
	Subject	Sale #1	Sale #2	Sale #3
CALP (COMPUTER ASSISTED LAND PRICING) neighborhood	2A	2H	2E	2H
Lot Size (FF)	60	50	NA	50
Lot Size (SF)	8,400	7,000	11,403	7,000
Model \$/FF	\$130	\$90	\$100	\$90
Model \$/SF	\$.90	\$.50	\$.80	\$.50
Adjustment Factor	100%	75%	100%	75%
DOR Value/Method	\$7,800/FF	\$3,375/FF	\$9,122/SF	\$3,375/FF
SUMMARY COMPARISON - SALES DATA ¹				
Grantor	Anderson	Matthews	Ereaux	Matthews
Grantee	LaFond	Salveson	Traynor	Masters
Sale Date	8/21/95	8/6/92	3/31/93	10/22/92
Sale Price	\$3,000	\$4,500	\$8,500	\$7,000
Financing	Cash	Contract, \$0 Dwn, 60 mo's @ 12%	Cash	Cash
SID's	None	None	\$316.40	Unknown
Personal Property	None	None	None	\$3,000
Sale \$/FF	\$50	\$90	NA	\$80 ²
Sale \$/SF	\$.36	\$.64	\$.75	\$.57 ³

The most widely used appraisal method to arrive at land value is the sales comparison approach. Sales of similar, vacant parcels are analyzed, compared, and adjusted to provide a value

¹ sales data derived from DOR exhibits

² (\$7,000[sale price]-\$3,000[personal property])/50 FF

³ (\$7,000[sale price]-\$3,000[personal property])/8,400 SF

indication for a parcel of land or particular neighborhoods being appraised. When employing the sales comparison approach, an appraiser must consider various elements which affect the sale and make upward or downward adjustments to the comparables. Various factors which may affect the sale price consist of financing terms, conditions of sale, market conditions, location, physical characteristics, non-realty components, etc.

In Mr. Halvorson's analysis of the comparability of the subject property and the sales presented, he recognized the subject property's location and presence of paved street, sidewalk and lighting district. It is the opinion of the Board that an adjustment for market financing should have been considered for sale #2 with no down payment made. Is a 12% interest rate is typical? (Refer to table, sale #1.) Sale #3 included \$3,000 in personal property, there again, an adjustment to the sale price should be considered. (Refer to table, sale #3.) The verification of the sales information is a key element in the appraisal process. There is no indication in the record that the DOR verified the comparable sales information documented on the RTC's. (exhibit #3)

The transaction of the subject property indicates a market trend down from the 1992 & 1993 sales presented by the DOR. 42.18.124 (b) ARM, states, "For the taxable years from January 1,

1993, through December 31, 1996, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 1992." These transactions do not prove that the 1992 value used by the DOR is incorrect or inflated for the base year. They do, however, indicate that there is little support for the front foot or square foot value the DOR has appraised the subject property.

DOR exhibit #6 is essentially a confirmation of the fact that the city wanted to get the lots which were taken back for delinquent taxes returned to the tax rolls "as quickly as possible." (ex. #6) The city of Malta was willing to sell the lots "for less than what would be considered as fair market value...". (ex. #6) When the city elected to put these lots back on the market, this action would undoubtedly affect the supply and demand relationship of vacant residential lots in 1993 and years after. Simply carrying forward values from a previous cycle does not constitute an accurate reflection of the market. The sales in the record are subsequent to the valuation date of January 1, 1992 as defined in 42.18.124 ARM. In addition no sales, other than the subject transaction, were from the subject neighborhood.

Based on the information in the record, it is the Board's opinion the market value for the subject property shall be \$90 a

front foot or \$5,400.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over this matter in accordance with 15-2-301(2), MCA.

2. 15-7-103, MCA, requires the Department of Revenue to implement a classification and appraisal system that is general and uniform.

3. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and the taxpayer must overcome this presumption. The Department of Revenue, however, should bear a certain burden of providing documented evidence to support its assessed values. Western Airlines, Inc. v. Catherine J. Michunovich, et al, 149 Mont. 347.428 P.2d 3. (1967).

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject shall be entered on the tax rolls of Phillips County by the Assessor of said County at the 1996 tax year at a of \$5,400 as determined by the State Tax Appeal Board. The decision of the Phillips County Tax Appeal Board is therefore modified.

Dated this _____ of July, 1997.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this _____ day of July, 1996, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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